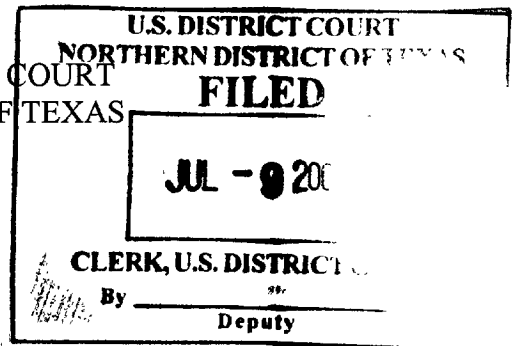


IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION



ROBBYE HISEY, AS ADMINISTRATOR OF  
THE ESTATE OF HANNAH BENAVIDES,  
DECEASED, and HEATHER BENAVIDES,  
INDIVIDUALLY

Plaintiffs,

VS.

FISHER-PRICE, INC., STORK CRAFT  
MANUFACTURING, INC., And KOLCRAFT  
ENTERPRISES, INC.

Defendants.

CIVIL ACTION NO.: 1-03CV-080

**APPENDIX TO DEFENDANTS FISHER-PRICE, INC., AND  
STORK CRAFT MANUFACTURING, INC.'S  
BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE**

Respectfully Submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: \_\_\_\_\_

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ATTORNEYS FOR DEFENDANTS FISHER-  
PRICE, INC. AND STORK CRAFT  
MANUFACTURING, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that the above and foregoing document was forwarded via certified mail, return receipt requested:

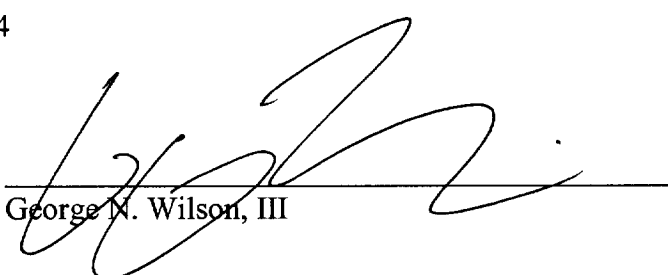
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Kolcraft Enterprises, Inc.*

on the 9 day of July, 2004

  
George N. Wilson, III

**APPENDIX TABLE OF CONTENTS**

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EXHIBIT “A”

Not Scanned —  
too large

EXHIBIT “B”

My name is Joe Benavides. I am over 18 years of age, and I am fully competent to make this Affidavit. I have personal knowledge of the facts stated in this Affidavit, and they are true and correct.

I assembled the crib for Hannah Benavides. To assemble the crib, I followed the assembly instructions. I did not find the instructions to be difficult to follow or confusing. After I assembled the crib, I did not notice any problems with the crib. All of the pieces fit together, and the pieces were secure, none of the pieces were loose, and the crib worked like it was supposed to. When I subsequently used the crib, I did not notice any problems with the crib, or how it worked.

#01005613



ZUDA RUSSELL  
Bryan County  
Notary Public in and for  
State of Oklahoma

My commission expires 5-26-05

Page 5

Signed before me this 20th day  
of April, 2004, by Joe Benavides.

Zuda Russell, Notary Public

Joe Benavides  
JOE BENAVIDES  
4/20/04

**Exhibit “          C          ”**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

ROBBYE HISEY, AS  
ADMINISTRATOR OF THE ESTATE  
OF HANNAH BENAVIDES, DECEASED,  
and HEATHER BENAVIDES,  
INDIVIDUALLY

Plaintiffs

vs.

FISHER-PRICE, INC.  
STORK CRAFT MANUFACTURING,  
INC., and KOLCRAFT  
ENTERPRISE, INC.

Defendants

**ORIGINAL**

Civil Action No.  
1-03CV-080

May 21, 2004  
Rockville, Maryland

Deposition of:

SHELLEY WATERS DEPPA, CHFP,

called for examination by counsel for the Defendants;  
pursuant to Notice, taken at the office of Whitman  
Reporting Services, Inc., 966 Hungerford Drive, Suite  
32B, Rockville, Maryland 20850, before Roberta A.  
Dolos, RPR, Notary Public in and for the State of  
Maryland, commencing at 8:40 a.m., when were present



1 on behalf of the respective parties:

2 For The Plaintiffs:

3 JASON A. MARK, ESQUIRE

4 Swartz & Swartz,

5 Ten Marshall Street,

6 Boston, Massachusetts 02108

7 (617) 742-1900

8

9 For The Defendants:

10 RANDY A. NELSON, ESQUIRE

11 Thompson, Coe, Cousins & Irons, LLP

12 700 North Pearl Street, 25th Floor

13 Dallas, Texas 75201

14 (214) 871-8200

15

16

17 ALSO PRESENT:

18 John Preston, P.E.

19 Bill Foster, Videographer

20

21

1 Q. There were a couple of other documents in  
2 your file that I'm not going to identify. One is a  
3 letter from Jason Mark, providing you with the copy  
4 of the notice for your deposition, and the other is a  
5 copy of the confidentiality agreement; correct?

6 A. Yes.

7 Q. Now, have we identified all the materials  
8 that you brought with you today to the deposition?

9 A. Yes.

10 Q. What is your business or profession?

11 A. I'm a human factors psychologist.

12 Q. What is a human factors psychologist?

13 A. A human factors psychologist is a  
14 psychologist that practices in the area of human  
15 factors, which is relating the person's capabilities  
16 and limitations to, in this case, the product design.

17 Q. What formal education have you had to  
18 prepare you to be a human factors psychologist?

19 A. I have a degree in psychology.

20 Q. You obtained that when?

21 A. 1976.

1 psychology; correct?

2 A. There is now.

3 Q. At the time that you obtained your degree,  
4 there were not such courses; is that correct?

5 A. Not that I know of.

6 Q. You didn't take any?

7 A. No.

8 Q. And there is, in fact, a specific degree  
9 that one can obtain in human factors psychology at  
10 the present time; correct?

11 A. Yes. I'm not sure if it is called human  
12 factors. Sometimes its called human factors  
13 psychology, sometimes it might be called human  
14 factors engineering or may be just called human  
15 factors. I'm not sure of the exact title.

16 Q. That is not the degree that you have;  
17 correct?

18 A. That's correct.

19 Q. Your degree, I think, is in psychology and  
20 sociology?

21 A. That's correct.

1 Q. Have you had any courses in human factors  
2 psychology as such?

3 A. Yes.

4 Q. What courses have had you?

5 A. I took a course at the University of  
6 Michigan. It might have been called human factors  
7 engineering. I don't recall the exact title of the  
8 course.

9 Q. That was a two-week course?

10 A. Yes.

11 Q. Okay. That's not a course that you get a  
12 grade in; correct?

13 A. That's correct.

14 Q. It was a seminar type of course?

15 A. Yes.

16 Q. After you graduated from college, what was  
17 your first job?

18 A. I worked for the Department of Housing and  
19 Urban Development, federal government.

20 Q. Doing what?

21 A. As a summer counselor.

1 for example, I worked in the -- HUD, its  
2 headquarters, I worked in the regional office in  
3 California and I worked in the local government in  
4 Montgomery County and worked in different places  
5 within HUD and took courses on leadership, et cetera.

6 Q. What was your next job?

7 A. I worked for a year at the U.S. Department  
8 of Housing and Urban Development in the New  
9 Communities portion of the Community Development  
10 Block Grant Program.

11 Q. Then your next job?

12 A. Then I went to the U.S. Consumer Products  
13 Safety Commission in the Human Factors Division,  
14 where I worked for 13 years.

15 Q. What was the year that you started with  
16 Consumer Products Safety Commission?

17 A. 1979.

18 Q. What was your position when you started?

19 A. Engineering psychologist.

20 Q. What did you do as an engineering  
21 psychologist?

1           A.     I did human factors work, where I analyzed  
2     injury data, evaluated product designs, evaluated  
3     warnings, wrote reports, prepared the information to  
4     CPSC commissioners, attended voluntary standards  
5     meetings, helped developed information and education  
6     for consumers. That's the kind of work that I did.

7           Q.     Is that the same work that you did  
8     throughout the time that you were with the Consumer  
9     Products Safety Commission?

10          A.     Yes.

11          Q.     And that commission is sometimes referred  
12     to as CPSC?

13          A.     That's right.

14          Q.     If we talk about that, we'll be talking  
15     about the same thing; correct?

16          A.     Yes.

17          Q.     All right. What year did you leave CPSC?

18          A.     1992.

19          Q.     Why did you leave?

20          A.     I'm sorry.

21          Q.     Why did you leave?

1           A.     Why? Because I had a baby and I didn't  
2     want to go back and work full-time.

3           Q.     Since 1992, what type of work have you  
4     done?

5           A.     I have done safety consulting work, either  
6     under my own name or as the Safety Behavior Analysis,  
7     Inc. name.

8           Q.     You have a company that you do work  
9     through?

10          A.     Yes.

11          Q.     What's the name of the company?

12          A.     Safety Behavior Analysis, Inc.

13          Q.     Is that the same company that you've had  
14     throughout your private work?

15          A.     Well, for about a year of it, I wasn't  
16     incorporated, so I was working as a sole proprietor.  
17     After that, it was always that company.

18          Q.     So after that first year, you have always  
19     worked through Safety Behavior Analysis, Inc.?

20          A.     Yes.

21          Q.     What is the business of Safety Behavior

1 believe have adequate warnings and instructions?

2 A. Again, I have not studied every crib out  
3 there.

4 Q. Okay. Of the cribs that you have studied,  
5 are there any cribs that you believe that the  
6 warnings are adequate, the instructions and warnings  
7 are adequate?

8 A. I don't recall at this time whether I came  
9 up with that determination or not. I don't recall  
10 all the specific cribs that I looked at.

11 Q. You mentioned earlier that you had worked  
12 as an engineering psychologist. You are not an  
13 engineer; correct?

14 A. That's correct.

15 Q. You do not have an engineering degree?

16 A. No.

17 Q. And have not taken courses in engineering?

18 A. That's correct.

19 Q. You do not hold yourself out as an expert  
20 in engineering?

21 A. Correct.



1 Q. Do you agree that human factors psychology  
2 and engineering are two separate fields of study?

3 A. Repeat the question.

4 Q. Do you agree that human factors psychology  
5 and engineering are two separate fields of study?

6 A. I do not agree necessarily with your  
7 statement. Human factors -- People that do human  
8 factors work traditionally either have engineering  
9 backgrounds or psychology.

10 Now, that there are courses specifically  
11 with human factors, they kind of meld the two. When  
12 you get a degree in some of the universities, even  
13 from the psychology school, the degree can be called  
14 human factors engineering. So there is some overlap  
15 there. There is overlap there.

16 Q. You would agree that you are not qualified  
17 to give engineering opinions?

18 A. That's correct.

19 Q. You are not licensed to practice  
20 engineering in any state; correct?

21 A. Correct.

1 Q. You have never worked as an engineer;  
2 correct?

3 A. Correct.

4 Q. You have never designed a product as an  
5 engineer?

6 A. Correct.

7 Q. You have never designed a crib?

8 A. Correct.

9 Q. You agree that you are not qualified to  
10 offer engineering opinions with respect to a crib;  
11 correct?

12 A. Correct.

13 Q. When you worked for CPSC, the work that you  
14 did was as a psychologist as opposed to an engineer;  
15 correct?

16 A. Correct.

17 Q. The work teams that were put together at  
18 CPSC usually included an engineer that worked with  
19 you; correct?

20 A. Yes.

21 Q. Were there certain products that you

1 A. Joe Benavides.

2 Q. And what information do you have as to  
3 whether or not the crib was correctly assembled?

4 A. We have a statement from him saying he  
5 thought it was correctly assembled.

6 Q. Do you have any evidence to establish that  
7 it was not correctly assembled?

8 MR. MARK: When? At the time of initial  
9 assembly?

10 MR. NELSON: Right. At the time that it  
11 was assembled.

12 THE WITNESS: I don't have any evidence  
13 other than what's on the record, no.

14 BY MR. NELSON:

15 Q. Do you have any evidence that the crib was  
16 not correctly assembled when it was assembled by Joe  
17 Benavides?

18 A. No.

19 Q. The condition of the crib immediately prior  
20 to the accident, what information do you have as to  
21 whether it was correctly assembled at that time?

1 A. There is no information.

2 Q. Am I correct then, you have no information  
3 that the crib was not properly assembled immediately  
4 prior to the accident?

5 A. There is no information on how -- on the  
6 state of the crib prior to the accident.

7 Q. Okay. And, therefore, no information that  
8 it was improperly assembled immediately prior to the  
9 accident; correct?

10 A. Correct.

11 Q. The information that you have as to the  
12 condition of the crib after the accident is what,  
13 immediately after the accident?

14 A. We have the testimony of the EMS and the  
15 police and we have the police photos.

16 Q. What is your understanding of the condition  
17 of the crib immediately after the accident?

18 A. Immediately after the accident, the drop  
19 side rail was bent out to the left with the bottom  
20 T-rail. The bottom screw was still attached to the  
21 crib and the T-rail was kind of bent out and the top

1 screw -- In order for it to get that way, the top  
2 screw was missing, and the top T-rail side had been  
3 disconnected from the top part of that T-rail.

4 Q. You say that the T-rail, the bottom T-rail  
5 was bent out. Do you have a photograph to show us  
6 what you're talking about?

7 A. Yes. Deposition Exhibit 11, Picture No.  
8 16.

9 Q. What you've handed me is the first page of  
10 Deposition No. 11 that has the No. 16 to the  
11 right-hand side of a photographs; is that correct?

12 A. Yes.

13 Q. Who do you understand took that photograph?

14 A. The police department.

15 Q. And the side rail in that photograph, is it  
16 still attached to the crib at any point?

17 A. Yes.

18 Q. Where is it attached?

19 A. That the side rail is still on the bottom  
20 T-rail but the T-rail is partially bent away from  
21 crib.

1 A. And they what?

2 Q. They reattached it to take photographs?

3 A. No. The testimony, and I believe this is  
4 Matt Barnett, said that the police tried to put the  
5 side rail back on, but couldn't, so they propped it  
6 up in front of the crib just to try to examine the  
7 crib.

8 Q. Are there any of the photographs that you  
9 think are significant in depicting what may or may  
10 not have been the condition of the crib immediately  
11 prior to the accident?

12 A. Well, I think we already discussed this,  
13 but to me, Photograph 16 was the most significant  
14 one, and we talked about the fact that in order for  
15 it to get that way, it gives you an indication of how  
16 it was beforehand.

17 Q. We did talk about that photograph, and  
18 that's why I'm asking you if there are any other  
19 photographs that you thought were significant in  
20 depicting the condition of the crib immediately prior  
21 to the accident.

1 A. No.

2 Q. Okay.

3 A. Let me just modify that slightly. Other  
4 than when you look at other -- One of the reasons a  
5 lot of this type of entrapment occurs between the  
6 mattress support and the side rail is because the  
7 mattress support system is compromised and bends down  
8 and is partly unhooked and becomes diagonal and  
9 allows more space.

10 So looking at these photos, for example, I  
11 can see that that wasn't the case in this particular  
12 crib. So, in that sense, looking at the other photos  
13 were significant to say that that wasn't a cause.

14 MR. NELSON: Okay. I'm going to object as  
15 non-responsive.

16 BY MR. NELSON:

17 Q. What I'm really trying to see is are there  
18 any other photographs that you think best depict what  
19 you believe that the condition of the crib was  
20 immediately prior to the accident, other than  
21 Photograph 16, Deposition Exhibit 11?

1 A. No.

2 Q. Are there any other photographs that you  
3 think are particularly significant to the opinions  
4 that you formed in this case, other than that  
5 particular photograph?

6 A. Are you talking about photographs only of  
7 the crib or also of the child?

8 Q. Any photographs. What I want to do is, I  
9 don't want to take your time, other than to just talk  
10 about the photographs that you think are particularly  
11 important to the opinions that you formed, so I want  
12 to get those and separate those from the ones that  
13 are not that significant to you.

14 A. As far as the crib is concerned and how it  
15 might or might not have been assembled, Photo 16 is  
16 the only one.

17 Q. Okay. Now, let's take any photographs  
18 with respect to your opinions. Are there any other  
19 photographs that are significant, particularly  
20 significant to your opinions in this case, other than  
21 that one photograph?



1           A.     Well, I first tested it without removing  
2     any screws.

3           Q.     Let's start there.

4           A.     Okay.

5           Q.     If the crib is assembled according to the  
6     instructions that are given, there cannot be enough  
7     gap created for the infant to have fallen through;  
8     correct?

9           A.     Correct.

10          Q.     You confirmed that with the testing that  
11     you did?

12          A.     Correct.

13          Q.     If the crib is not assembled correctly, and  
14     you remove a screw from the bottom left T-rail, you  
15     test it to determine whether it would create an  
16     opening large enough for the infant to become  
17     trapped; correct?

18          A.     In the position that she was alleged to be  
19     entrapped in, yes.

20          Q.     Okay. You did that test?

21          A.     Yes.

1 Q. And that test confirmed that that would not  
2 have created enough space for the infant to become  
3 trapped; correct?

4 A. Correct.

5 Q. Then you did another test where you  
6 detached the lower right T-rail determine whether  
7 that would create enough gap for the child to become  
8 entrapped; correct?

9 A. Again, I reattached the screw first. I  
10 want to make sure you're correct on that because you  
11 attach the one thing. And, again, in the position  
12 that she was alleged to be in, that one thing alone,  
13 was not large enough to create that opening, yes.

14 Q. You confirmed that they could have even had  
15 the T-rail not in the track on one side and that  
16 would not have created enough space for the child to  
17 become trapped; correct?

18 A. Where she was alleged to become entrapped,  
19 yes.

20 Q. Well, there is no other -- I mean -- Well,  
21 then you did a further test where you took a screw

1 out on one side on the bottom left T-rail; correct?

2 A. Yes.

3 Q. And then you also took the side rail out of  
4 the track on the lower right T-rail correct?

5 A. Yes.

6 Q. You tried it with both of those not  
7 assembled correctly --

8 A. Correct.

9 Q. -- and tested that; correct?

10 A. Correct.

11 Q. And based upon that test, what you  
12 concluded was the opening appears large enough to  
13 entrap a child where the infant was found; correct?

14 A. Correct.

15 Q. Okay. That's what you stated in your  
16 report, that it appears large enough; correct?

17 A. Correct.

18 Q. You didn't confirm that with an actual  
19 wedge or doll or some type of figure; correct?

20 A. Correct.

21 Q. The other test that you were talking about

1 used. Are you aware of any company that manufactures  
2 a crib using a continuous T-rail?

3 A. No.

4 Q. Have you developed any drawings for such a  
5 crib?

6 A. No.

7 Q. Okay. Develop any drawings to show that  
8 design would be outside your scope of expertise,  
9 would it not?

10 A. To do the official engineering drawings, I  
11 would say, yes.

12 Q. That's not something that you have ever  
13 done as part of your work, is to draft the design of  
14 a particular product; correct?

15 A. I don't know what you mean by "draft the  
16 design."

17 Q. You understand there's drawings that have  
18 to be drawn up for a product to be manufactured?

19 A. Are you talking about blueprints?

20 Q. Yes.

21 A. Have I ever drawn blueprints, no.

1 Q. That's what would be used to manufacture a  
2 different design of the T-rail, other than the one  
3 that Stork Craft used; correct?

4 A. Yes.

5 Q. In this case, are you aware of the manner  
6 in which the mattress support is attached to the  
7 crib?

8 A. Yes.

9 Q. There has been deposition testimony that  
10 you have given where you have cited that as being a  
11 good design; correct?

12 A. Yes. A better design than when you have  
13 got the hooks on there.

14 Q. If you used a continuous T-rail for the  
15 side rails, you would not be able to attach the  
16 mattress support in the manner in which it's attached  
17 to the present design; correct?

18 A. Correct.

19 Q. Have you developed any alternative way to  
20 attach the mattress support if you used a continuous  
21 T-rail?

1 A. No, but I have seen other designs.

2 MR. NELSON: Object as non-responsive.

3 BY MR. NELSON:

4 Q. Have you developed any alternative design  
5 so that if you used a continuous T-rail for this  
6 particular crib?

7 A. No.

8 Q. Have you done any testing to determine  
9 whether moving the mattress support from the position  
10 that it's in would affect the structural integrity of  
11 the crib?

12 A. Have I done any testing to that effect?

13 Q. Right.

14 A. No.

15 Q. Have you done any studies to determine the  
16 incident rate for the subject crib being  
17 misassembled?

18 A. No.

19 Q. Have you done any studies to determine how  
20 the misassembly rate of the subject crib would  
21 compare to other cribs?

1 A. No.

2 Q. Have you have done any studies to determine  
3 whether a continuous T-rail design would more or less  
4 likely to be misassembled than the T-rail system used  
5 on the subject crib?

6 A. What is your definition of "studies" in  
7 this case?

8 Q. What's your definition of "studies"?

9 A. Well, in my work on this case, in looking  
10 at why it could be misassembled and miss the bottom  
11 rail, it's because you have to put it on the top two  
12 rails and then you have to go down and also get it on  
13 the bottom two rails. So, if you call that a study,  
14 then making it a continuous rail, you can't miss the  
15 bottom rails because once you get it on the top, it  
16 slides all the way down.

17 MR. NELSON: Object as non-responsive.

18 BY MR. NELSON:

19 Q. What you've described is what you did when  
20 you were using the subject crib; correct?

21 A. Yes.

1 Q. As far as using a single T-rail system, you  
2 have never done anything to see if that type of  
3 system is more or less likely to be misassembled;  
4 correct?

5 A. If by, "done anything," you mean, did I  
6 bring people in and have them assemble it and see  
7 what happens, no, I did not do that.

8 Q. Okay. You have not done that, nor have you  
9 assembled or disassembled a continuous T-rail crib to  
10 see if it's more or less likely to be misassembled;  
11 correct?

12 A. Correct.

13 Q. If someone were to design a continuous  
14 T-rail system, that would need to be someone, other  
15 than yourself, that would have the expertise to  
16 design that system; correct?

17 A. Correct.

18 Q. You have done no studies to determine  
19 whether that particular design would be safe or less  
20 safe than the subject crib design; correct?

21 A. You asked me this a few minutes ago. We



1       went through the discussion a few minutes ago, I  
2       don't have anything to add to it.

3           Q.     It would be easier if you just answer my  
4       question, because if I've forgotten, I've forgotten,  
5       but I want to ask you.

6                   Have you done any studies to determine  
7       whether the single T-rail system would be as safe or  
8       less safe or more safe than the subject crib design?

9           A.     Again, it depends on what you define  
10      "studies." I explained what I define "studies,"  
11      because that's what you asked me to do, and then I  
12      explained that, yes, it would make a difference.

13                   I don't have anything to add to what I  
14      explained a couple minutes ago.

15           Q.     So you have not done any studies with other  
16      people using that type of design to see if it's more  
17      or less likely to be misassembled?

18           A.     That's correct.

19           Q.     And you have done nothing to determine  
20      whether it would be more or less safe than the  
21      subject crib?

1 A. That is incorrect. As I said --

2 Q. What have you done to determine that a  
3 single T-rail system crib would be more safe than the  
4 subject crib T-rail?

5 A. And, again, you look at logic. With the  
6 two-rail system, when you --

7 Q. No. I'm asking you what you've done.

8 A. Well, this is what -- Analysis is what I've  
9 done. I did a safety analysis. The analysis is --

10 Q. Okay. What single T-rail system have you  
11 analyzed to compare with this system?

12 A. I have analyzed the concept. I have not  
13 analyzed an actual single rail, but I've analyzed the  
14 concept because the concept of the two-rail system is  
15 that you miss the bottom rail on the way down. When  
16 you have a single rail system, you can't miss the  
17 bottom rail because it's one continuous rail.

18 Q. Are you sure that you can't miss with a  
19 single continuous rail system?

20 A. When you're at eye level and you're putting  
21 it in the side rail into the system, you're at eye

1 level, you can see that you've made it, then once  
2 it's on the track, it would stay on the track.

3 Q. Name the number of occasions where you've  
4 done that to establish that to be a fact. Have you  
5 done that 20 times to see if it is more or less  
6 likely to be misassembled?

7 A. I have not done it. I said, I did an  
8 analysis.

9 Q. So you haven't done it a single time, is  
10 that your testimony?

11 A. That's correct.

12 Q. Have you done any studies to determine  
13 whether a single continuous T-rail system would  
14 present other problems that could be a safety hazard?

15 A. No.

16 Q. So you don't know that that would  
17 necessarily be a safer design; correct?

18 A. For the hazard that we're discussing, it's  
19 a safer design.

20 Q. Yes, but you can't -- you can't look at one  
21 hazard, you have to look at the overall safety of the

1 Q. You can refer to your report, if you would  
2 like, I would like for you just to list for me the  
3 opinions that you developed in this case.

4 A. Okay. Exhibit 4, Page 23 have the  
5 opinions with the bases in both this report and in  
6 the other report.

7 Q. Ms. Deppa, would you list for me the  
8 opinions that you have developed in this case?

9 A. Yes.

10 Q. Number one?

11 A. The product is defective and unreasonably  
12 dangerous as designed because it presents an  
13 entrapment asphyxiation hazard and by design it  
14 includes both the design and the warnings.

15 Q. You agree, and I believe you already have  
16 testified --

17 A. Can I just interrupt? Did you want me to  
18 list all of the opinions?

19 Q. We'll get to that.

20 A. Oh, because you stopped me after one, even  
21 though you asked me to list them all. Okay. I'm

1       sorry, you asked them to list them all, I didn't know  
2       if you wanted me to continue answering your question  
3       before you asked another one.

4             Q.       Why don't you go ahead?

5             A.       Okay. You said that one answered and then  
6       you --

7             Q.       Sure.

8             A.       The manufacturer should have foreseen the  
9       hazard of drop rail misassembly which resulted in  
10       dislodgement and entrapment asphyxiation hazard when  
11       the consumer was using the product in a reasonably  
12       foreseeable manner and the hazard was unforeseen to  
13       them.

14                    Those are my three opinions in this case.

15             Q.       Okay. Are those the three opinions to  
16       which you intend to testify at time of trial?

17             A.       Yes.

18             Q.       Any other opinions?

19             A.       No. There's a lot of bases under those  
20       opinions that I consider bases.

21             Q.       Okay. I think you referenced me to a

1 certain page on your report.

2 A. Exhibit No. 4, Page 23.

3 Q. If the crib is installed properly,  
4 according to the instructions, it does not create an  
5 entrapment hazard; correct?

6 A. If you mean if it was assembled according  
7 to the instructions and it was in that same assembly  
8 state, then I would agree that it doesn't present an  
9 entrapment hazard.

10 Q. Okay. If the crib is assembled according  
11 to the instructions and the warnings are followed by  
12 the user, so that they check to see if there are  
13 parts missing or broken, the crib does not create an  
14 entrapment hazard; correct?

15 A. Correct.

16 Q. In this case, you do not know if the crib  
17 was misassembled or not misassembled at the time that  
18 it was originally assembled; correct?

19 A. Say it again.

20 Q. At the time this particular crib was  
21 assembled by Joe Benavides, you don't know if it was

1 assembled correctly or incorrectly; is that right?

2 A. Based on discovery information, I don't  
3 know that. Based on how the crib ended up and in  
4 order to get it to end up in that position, it is my  
5 opinion that it was not assembled correctly.

6 Q. You have no information from anybody that  
7 saw the crib at the time that it was assembled upon  
8 which to base an opinion that it was misassembled;  
9 correct?

10 A. Correct.

11 Q. In fact, the testimony that you do have in  
12 the form of an affidavit is that it was assembled  
13 correctly; correct?

14 MR. MARK: Objection.

15 THE WITNESS: That he thought it was  
16 assembled correctly.

17 BY MR. NELSON:

18 Q. Correct?

19 A. Correct.

20 Q. You have no testimony from anybody else  
21 that they saw anything that indicated that it was

1 misassembled; correct?

2 A. Correct.

3 Q. Did the warnings and instructions that were  
4 attached to the crib in any way -- strike that.

5 Did the warnings that were attached list  
6 the warnings that were recommended by the ASTM  
7 standard?

8 A. Yes.

9 Q. Did they fail to provide any warnings that  
10 were recommended by the ASTM standard?

11 A. No.

12 Q. Do you have any complaint about the  
13 instructions and warnings that were provided with  
14 this crib?

15 A. Yes.

16 Q. What is your complaint?

17 A. Well, the first deficiency is that a  
18 warning is supposed to present the hazard, the  
19 consequences and instructions for avoiding the  
20 hazard. The warning gives you the consequences which  
21 is serious injury or death and how to avoid the



1 hazard, but it does not tell you what the hazard is,  
2 which is entrapment or falls.

3 Secondly, I have -- the second deficiency  
4 is in the location of the warnings. The warnings  
5 should have been -- and there is only actually a  
6 couple of warnings, should have been separated out  
7 from the instructions and put in a conspicuous  
8 location to be able to serve as a reminder to the  
9 person using the crib.

10 Q. Have you finished?

11 A. Yes.

12 Q. Have you now given us as specifically and  
13 in as much detail as you can your complaints with the  
14 warnings and the instructions that were provided with  
15 the subject crib?

16 A. Oh, no, I haven't. I was dealing with  
17 warnings.

18 With instructions, the instructions aren't  
19 clear enough to put the crib together. It's not  
20 clear. If you try to follow the instructions, it's  
21 difficult to do and the instructions weren't clear

1 enough to make sure you don't miss that bottom rail.  
2 That's discussed in the report, earlier in the  
3 report, and also on Page 18 when I discuss how the  
4 instructions are not easy to read and understand  
5 because they are not specific enough as to try to put  
6 it together.

7 Q. Have you now told us specifically, in as  
8 much as detail as you can, all of your complaints  
9 about the warning and instructions that were provided  
10 with the subject crib?

11 A. Yes.

12 Q. Other than yourself, do you know of anybody  
13 that's attempted to assemble this subject crib?

14 A. No.

15 Q. Where, in your opinion, should the warnings  
16 have been placed?

17 A. The warnings should have been placed in a  
18 conspicuous location so that in your everyday use of  
19 the product that it would be -- Let me just quote  
20 some -- so that they are visible in your  
21 manufacturer's use position.

1           So it could have been inside the headboard  
2 or footboard. It could have been on the drop side  
3 rail.

4           We are not talking about everything that's  
5 on the instructions, we are talking about just the  
6 warnings part of it.

7           Q.     Okay. Have you drafted instructions that  
8 you think would have been sufficient in this case?

9           A.     No.

10          Q.     Have you drafted warnings that you think  
11 should have been provided in this case?

12          A.     No.

13          Q.     Can you point to any manufacturer whose  
14 instructions and warnings you think should have been  
15 followed or copied by the manufacturer of this crib?

16          A.     I give an example of a manufacturer who had  
17 a clearer warning about how to put the T-rails  
18 together.

19          Q.     Who is that?

20          A.     It was Costco.

21          Q.     You have testified in other cases that

1 Costco's instructions and warnings were not  
2 sufficient; correct?

3 A. For other reasons, yes.

4 Q. In this case, if there was a misassembly of  
5 the crib, would it have been the failure to attach  
6 the screw and to get the side rail in the track on  
7 the T-rail?

8 MR. MARK: On the right side?

9 MR. NELSON: Yes.

10 THE WITNESS: Yes. It would have either  
11 been that or when you are talking about the screw,  
12 that the screw might have been attached and it came  
13 back out again.

14 It's unclear, for example, because the  
15 particular screw in question has a spreading dowel  
16 that is now protruding from the crib, that if that  
17 protruding dowel may have been a factor, it means --  
18 which may have let the screw come back out again if  
19 that's how it originally was.

20 BY MR. NELSON:

21 Q. We don't know if that's true one way or the

1 other; correct?

2 A. We don't know.

3 Q. You do know that the crib had been  
4 assembled and disassembled at least once or twice  
5 before you ever saw it; correct?

6 A. Yes.

7 Q. When you got it in December of 2003, do you  
8 know how many times it had been disassembled and  
9 reassembled?

10 A. The only record that exists on that is that  
11 it was, of course, it was initially assembled, that  
12 one side rail was disassembled and then reassembled  
13 and then the whole thing was disassembled.

14 So on the side rail, we know that went on  
15 and off a couple times. I don't know about the rest  
16 of crib, whether it was assembled or disassembled,  
17 whether it was only assembled the one time and, yet,  
18 one of those screws -- There was a second threaded  
19 insert that wasn't in, it was on the non-accident  
20 side and it may not have ever been reassembled, that  
21 side.

1           According to John Preston, there has been a  
2 problem with threaded inserts.

3           And we already discussed the fourth one.  
4 We're talking again about bases for opinions, talking  
5 about alternative designs. We have talked about the  
6 T-rail before and how it could have been continuous  
7 and had more screws in it.

8           Some other possibilities they could have  
9 done with the T-rails is at the factory, the factory  
10 could have installed the T-rail, which included the  
11 spreading dowel and the screw and it would have  
12 eliminated that possibility of misassembly, and there  
13 were other cribs on the market or have been other  
14 cribs on the market that have had their T-rails  
15 installed at the factory, such as the Costco crib.

16           Q.     And the Costco crib is, of course, the one  
17 that you have been involved in several occasions,  
18 where you have opined that it was defective; correct?

19           A.     Well, this particular crib, where they had  
20 at installed --

21           Q.     Just --

1           A.     Wait a minute. No. I'm answering your  
2 question, please. Let me finish.

3           Q.     Why don't you first answer my question then  
4 if, you want to add something to it --

5           A.     Well, one answer would be no. The  
6 official answer would be no because the crib that I'm  
7 discussing where the T-rails were already attached  
8 were the predecessors Costco cribs, which were the  
9 safe cribs. Then they unattached the T-rails and let  
10 the consumers put them on and reduced the number of  
11 slots in the platform and that's what caused the  
12 problem, those things together.

13                     So the crib I'm referencing now is the  
14 safer crib that did not have that problem.

15                     We talked about alternative designs to the  
16 T-rail and one being the rod system. There's  
17 another system called the hidden hardware system  
18 which my research has been around for seven years and  
19 it has a system where the channels, instead of being  
20 external channels, they are internal channels to  
21 either the ends or to the side rails.

1           That's what I have to add to what we've  
2 already discussed.

3           Q.     Okay.     Have we discussed your bases for  
4 the opinion that the crib was defective?

5           A.     Yes.

6           Q.     Okay.     Are you aware of any tests that are  
7 required for a manufacturer of a crib to put its  
8 cribs through that this crib was not put through?

9           A.     Could you repeat the question?

10          Q.     Are there regulations concern the types of  
11 tests that a crib manufacturer is to put its crib  
12 through?

13          A.     Are there types of tests, yes.

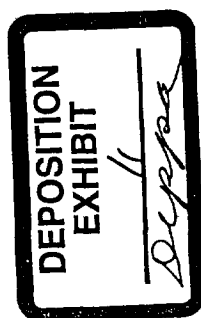
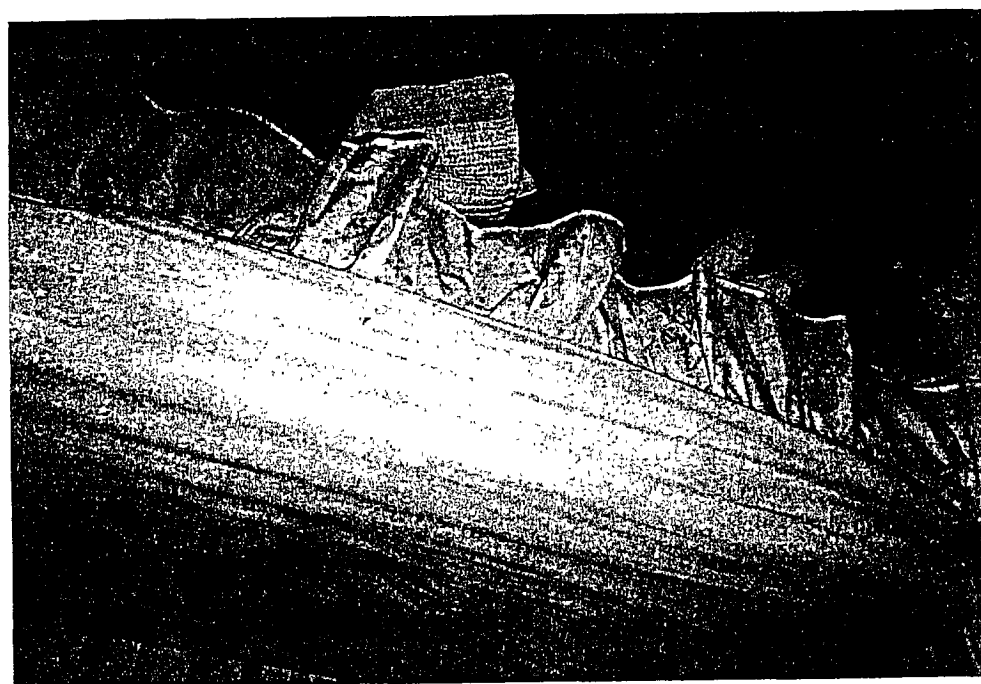
14          Q.     And, to your understanding, did this  
15 particular crib go through all those tests?

16          A.     Yes.

17          Q.     Was the infant in this case able to stand  
18 up?

19          A.     I think there's a little bit of controversy  
20 on whether she was or she was not.     It sounded like  
21 she was just starting to stand up by pulling up on

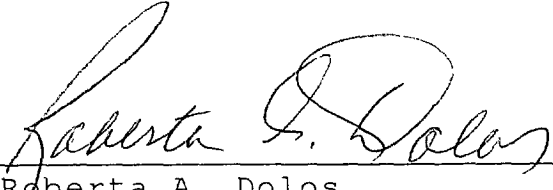




#16

## 1 CERTIFICATE OF COURT REPORTER AND NOTARY PUBLIC

2 I, Roberta A. Dolos, the officer  
3 before whom the foregoing deposition was taken, do  
4 hereby certify that the witness whose testimony  
5 appears in the foregoing deposition was duly sworn by  
6 me; that said testimony was taken stenographically by  
7 me and thereafter reduced to typewriting under my  
8 direction; that said testimony is a true and accurate  
9 record of the testimony given by said witness to the  
10 best of my knowledge and belief; that I am neither  
11 Counsel for, related to, nor employed by any of the  
12 parties to the action in which this deposition was  
13 taken; and further, that I am not a relative or  
14 employee of any attorney or counsel employed by the  
15 parties thereto, nor financially or otherwise  
16 interested in the outcome of this action.

17   
18 Roberta A. Dolos  
19 Notary Public in and for the  
20 State of Maryland

21 My commission expires: August 1, 2004.

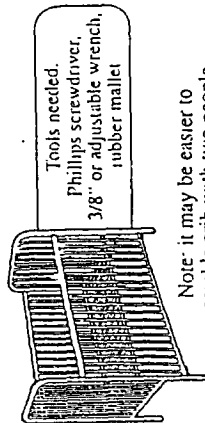
**Exhibit “      D      ”**

# COSCO

## Crib Instructions

Save for future reference.

4359 2407



Note: it may be easier to assemble crib with two people.

If you are missing parts or have any questions about this Cosco product, contact us first! If you live in the United States, you can call Cosco at 1-800-544-1108 from 8 a.m. to 4 p.m. EST. In Canada, call 1-800-387-2329 from 8 a.m. to 4:30 p.m. EST.

You can also order parts by writing to the appropriate address below. Include the product model number, color and a brief description of the part.

Cosco Inc  
2525 State Street  
Columbus, IN 47201  
USA

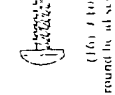
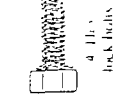
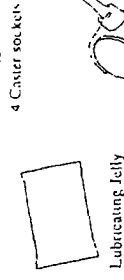
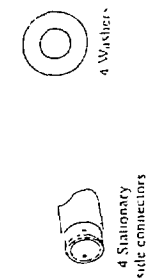
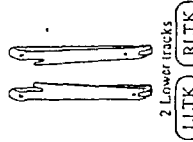
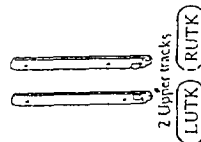
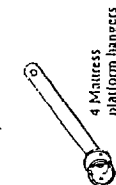
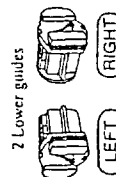
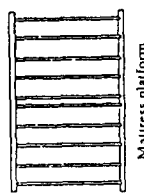
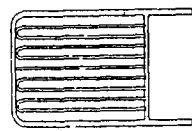
In Canada only:  
Dorel Industries Inc.  
4750 des Grandes Prairies  
Montreal, Quebec H1R 1A3

### WARNINGS:

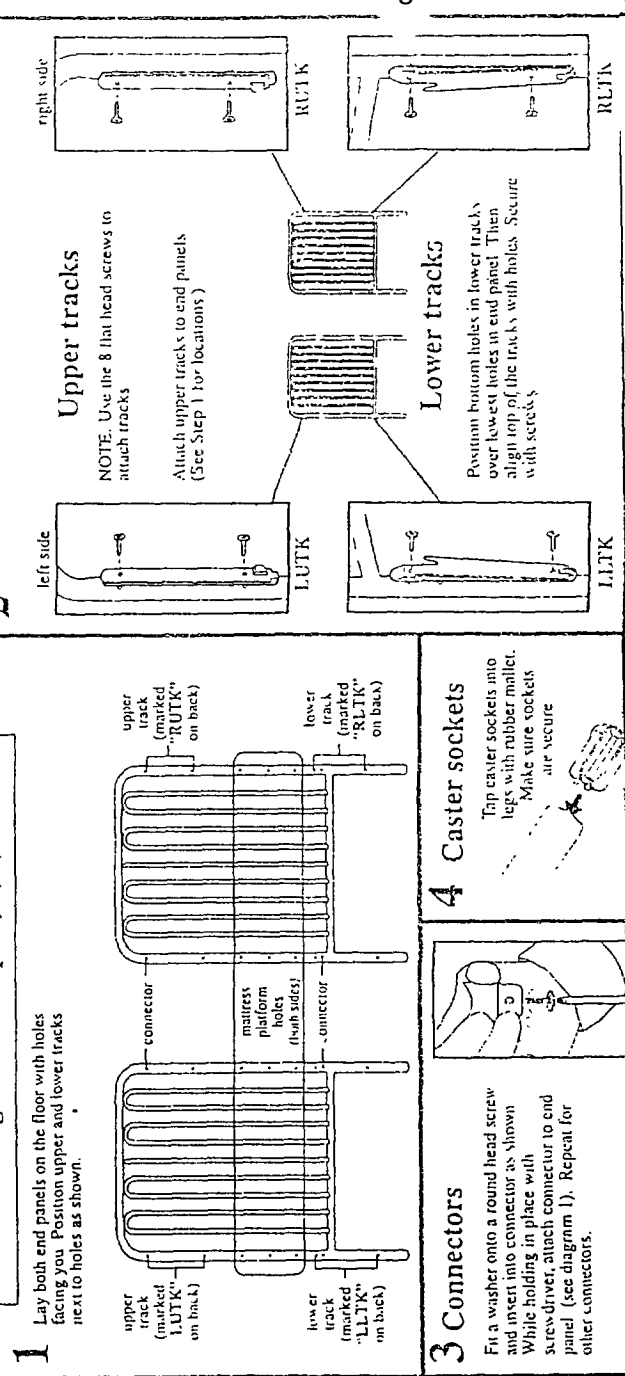
Failure to follow these warnings and assembly instructions could result in serious injury or death.

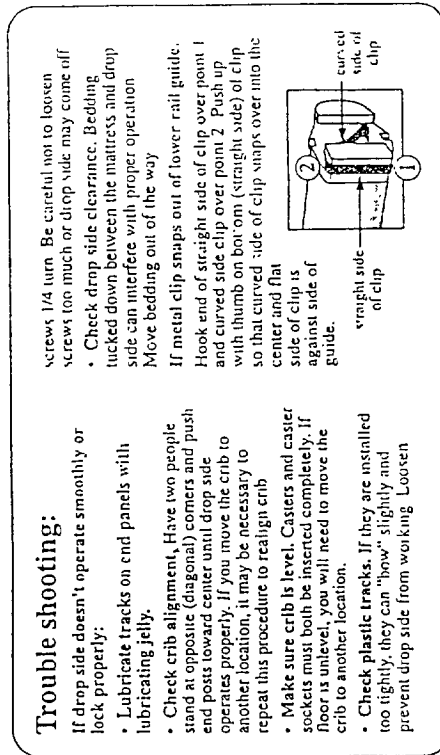
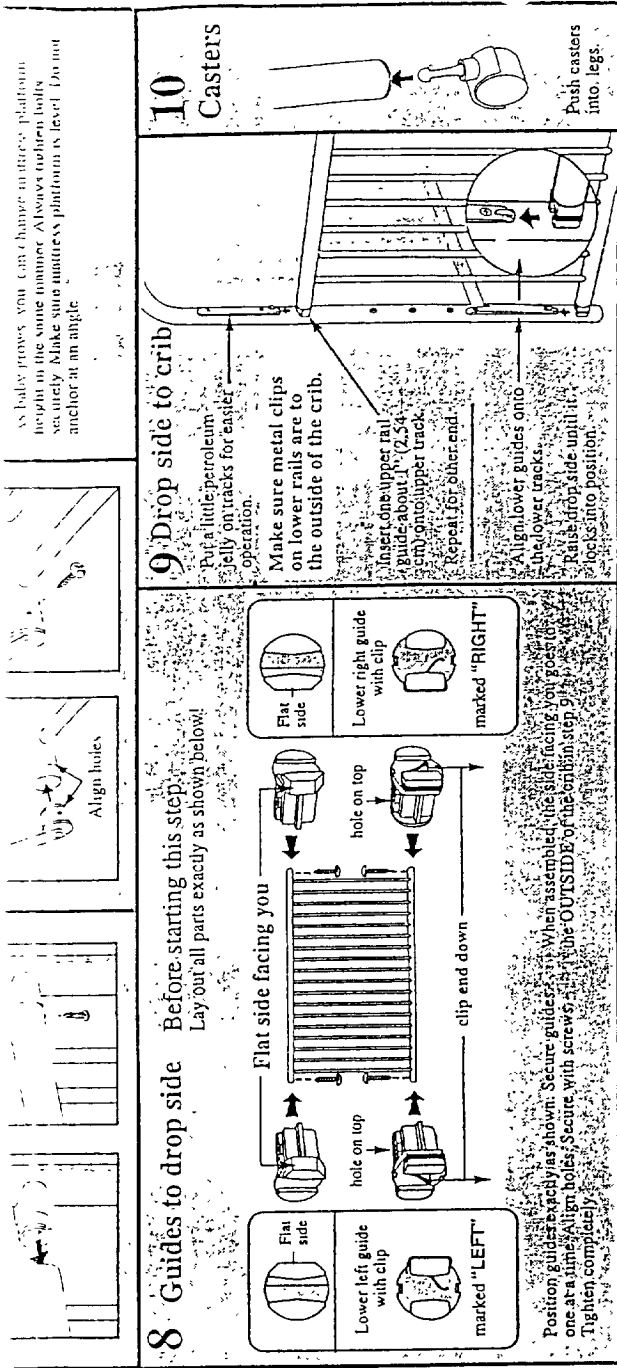
- Read all instructions before assembling crib. KEEP INSTRUCTIONS FOR FUTURE USE.
- Before each use or assembly, inspect crib for damaged hardware, loose joints, missing parts or sharp edges. DO NOT use crib if any parts are missing or broken. Ask your dealer or write to manufacturer for replacement parts and instructional literature if needed. DO NOT substitute parts.
- Check fasteners periodically for tightness. Do not over-tighten. This may cause distortion or breakage of parts.

Parts included: Parts may not appear the same as these illustrations. However, the assembly method remains the same.

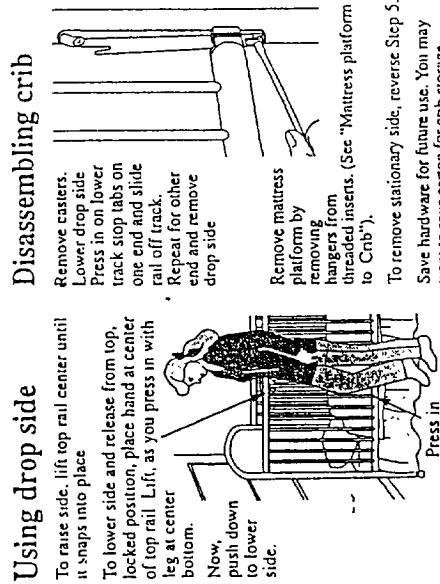


### Use this diagram for Steps 1, 2, 3, and 7.





1335



- Do not place crib in a room with a window. Always use blinds or drapes to prevent a child from reaching the window.
- Keep wall decorations, especially those with strings, completely out of child's reach.
- If refinishing, use a non-toxic finish specified for children's products.
- DO NOT leave child in crib with side lowered. Be sure side is in raised and locked position whenever child is in crib.
- When child is able to pull to standing position, set mattress to lowest position and remove bumper pads, large toys and other objects that could serve as steps for climbing out.
- Never use plastic shipping bags or other plastic film as mattress covers because they can cause suffocation.
- Do not tie pacifiers, necklaces, or any other items around child's neck or on the crib pads. This could cause strangulation.
- DO NOT use a water mattress with this crib.
- Any mattress used in this crib must be at least 27 1/4" by 51 5/8" (69 x 181 cm) with a thickness not exceeding 6" (15 cm).
- The American Academy of Pediatrics recommends that babies be placed on their backs. Based on your doctor's advice, it may be preferable for some babies to be placed on their stomachs. Do not place extra padding, blankets, quilts, pillows, toys or stuffed animals near baby's head or under baby.
- Parents should ensure a safe environment for the child by checking regularly, before placing the child in the product, that every component is properly and securely in place.

### Care and Cleaning:

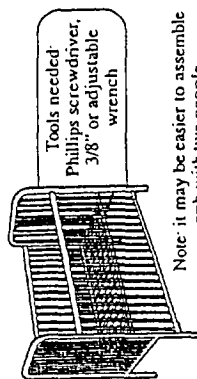
- Do not scratch or chip the finish. Do not use abrasive chemicals for cleaning. Clean with mild soap on a soft rag. Rinse and dry thoroughly.
- If you ever refinish this furniture, be sure to use only a non-toxic finish specified for children's products.



# COSCO

SnapTrac™ Easy Assembly  
Save for future reference.

4358-2241



Tools needed:  
Phillips screwdriver,  
3/8" or adjustable  
wrench

Note: it may be easier to assemble  
cnb with two people.

If you are missing parts or have any questions about this Cosco product, contact us first! If you live in the United States, you can call Cosco at 1-800-544-1108 from 8 a.m. to 4 p.m. EST. In Canada, 1-1-800-587-2229 from 8 a.m. to 4:30 p.m. EST.

You can also order parts by writing to the appropriate address below. Include the product model number, color and a brief description of the part.

Cosco Inc.  
2525 State Street  
Columbus, IN 47201  
USA

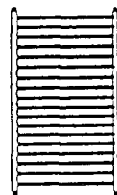
In Canada only:  
Dorel Industries Inc.  
4730 des Grandes Prairies  
Montreal, Quebec H1R 1A3

## WARNINGS:

Failure to follow these warnings and assembly instructions could result in serious injury or death.

- Read all instructions before assembling cnb. KEEP INSTRUCTIONS FOR FUTURE USE.
- Before each usage or assembly, inspect crib for damaged hardware, loose joints, missing parts or sharp edges. DO NOT use cnb if any parts are missing or broken. Ask your dealer or write to manufacturer for replacement parts and instructional literature if needed. DO NOT substitute parts.

Parts included: Parts may not appear the same as these illustrations. However, the assembly method remains the same.



Drop side (guides on ends of rails)



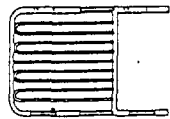
4 caster sockets



Stationary side



4 casters



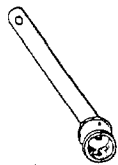
Left end panel



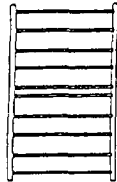
4 stationary side connectors



Right end panel



4 mattress platform hangers



Mattress platform



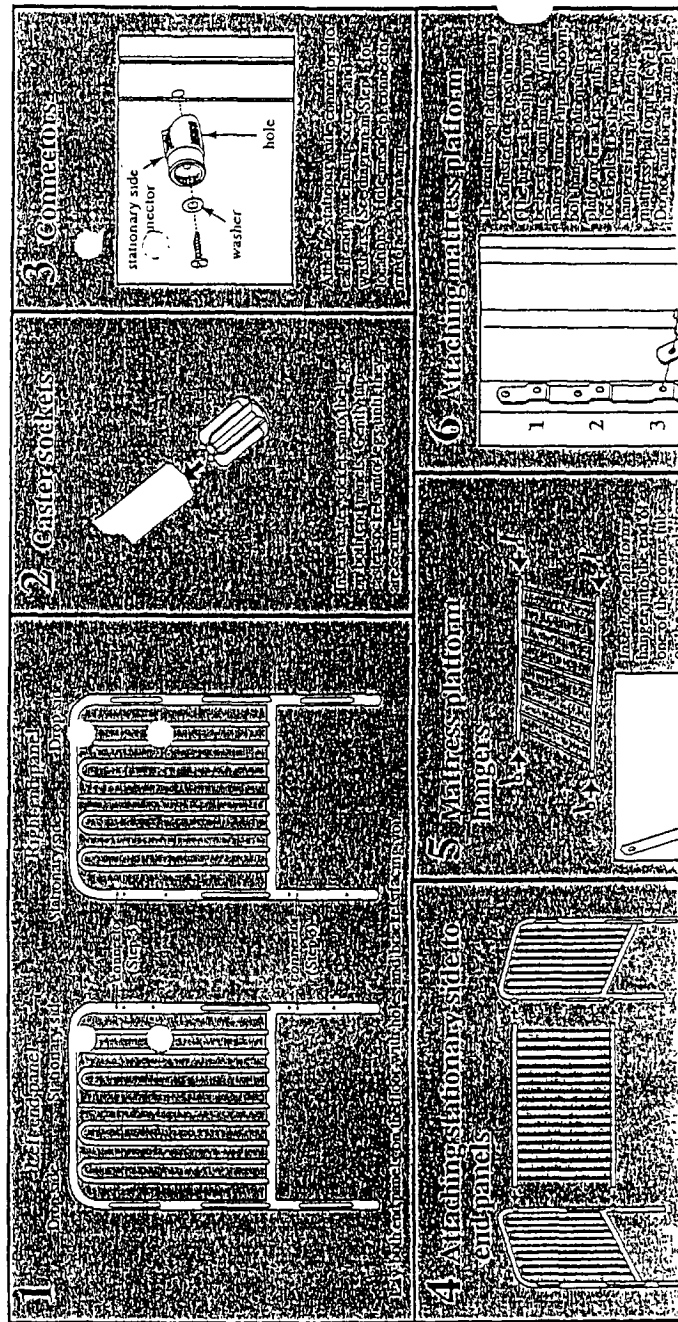
4 washers



4 bolts



12 #10 screws



0745

- overtighten. This may cause distortion or breakage.
- After raising side, make sure it is locked in place.
- When child is able to climb out, reaches the height of 35 in. (90 cm) or when the height of the side rail is less than 3/4 of the child's height, the crib shall no longer be used.
- DO NOT place a crib near window where cords from blinds or drapes may strangle a child.
- Keep wall decorations, especially those with strings, completely out of child's reach.
- If refinishing, use a non-toxic finish specified for children's products.
- DO NOT leave child in crib with side lowered. Be sure side is in raised and locked position whenever child is in crib.
- When child is able to pull to standing position, set mattress to lowest position and remove bumper pads, large toys and other objects that could serve as steps for climbing out.
- Never use plastic shipping bags or other plastic film as mattress covers because they can cause suffocation.
- Do not tie pacifiers, necklaces, or any other items around child's neck or on the crib parts. This could cause strangulation.
- DO NOT use a water mattress with this crib.
- Any mattress used in this crib must be at least 27 1/4" by 51 5/8" (69 x 131 cm) with a thickness not exceeding 6" (15 cm).
- Use a crib as a crib, not as a play pen. Remember that a crib is not a substitute for a parent's supervision.
- Parents should ensure a safe environment for the child by checking regularly, before placing the product in the product, that every component is properly and securely in place.

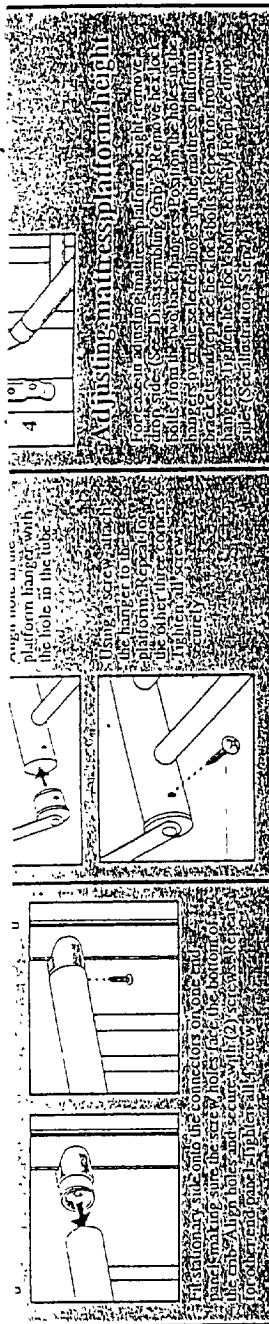
#### Care and Cleaning:

Do not scratch or chip the finish. Do not use abrasive chemicals for cleaning. Clean with mild soap on a soft rag. Rinse and dry thoroughly, and wax occasionally.

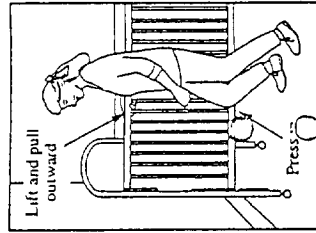
If you ever refinish this furniture, be sure to use only a non-toxic finish specified for children's products.

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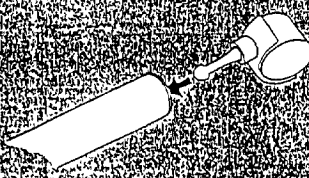


#### Using drop side

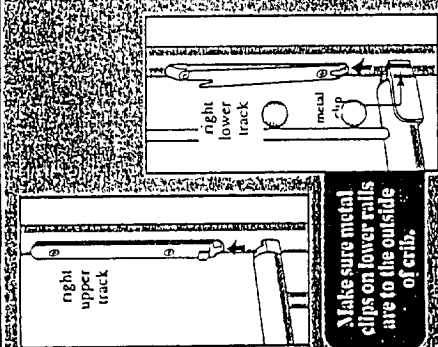


To raise side, lift top rail center until it snaps into place. To lower side and release from top, lift and pull outward as you press in with leg at center bottom. Now push down to lower side.

#### Attaching casters



Attach one caster to the bottom of each leg.

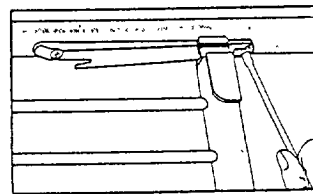


Make sure metal clips on lower rails are to the outside of crib.

#### Attaching drop side

When attaching the drop side, be sure the drop side is correctly aligned. The drop side must be attached to the lower rail so the metal clips must face toward the outside of the crib. The drop side must be attached to the lower rail so the metal clips must face toward the outside of the crib. The drop side must be attached to the lower rail so the metal clips must face toward the outside of the crib. The drop side must be attached to the lower rail so the metal clips must face toward the outside of the crib.

#### Disassembling crib



Remove casters. Lower drop side. Press in on lower track stop tabs on one end and slide rail off track. Repeat for other end and remove drop side. Remove mattress platform by removing hangers from mattress platform brackets (See "Adjusting mattress platform height").

To remove stationary side, reverse Step 4. Save hardware for future use. You may want to save carton for crib storage.

#### Trouble shooting:

If drop side doesn't operate smoothly or lock properly:

- Lubricate tracks on end panels. Plastic tracks are lubricated during production. If drop side does not operate smoothly after being raised and lowered several times, additional lubrication with petroleum jelly may be necessary.
- Check crib alignment. Have two people stand at opposite (diagonal) corners and push end posts toward center until drop side operates properly. If you move the crib to another location, it may be necessary to repeat this procedure to realign crib.
- Make sure crib is level. Casters and caster sockets must both be inserted completely. If floor is uneven, you will need to move the crib to another location.
- Check plastic tracks. If they are installed too tightly, they can "bow" slightly and prevent drop side from working. Loosen screws 1/4 turn. The

careful not to loosen screws too much or drop side may come off.

- Check drop side clearance. Bedding tucked down between the mattress and drop side can interfere with proper operation. Move bedding out of the way to use drop side.

If metal clip snaps out of lower rail guide:

- Hook end of straight side of clip over point 1 and curved side clip over point 2. Push up with thumb on bottom (straight side) of clip so that curved side of clip snaps over into the center and flat side of clip is against side of guide.

